

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2019] NZERA 123  
3041311 and 3041172

BETWEEN

NELMAC LIMITED  
Applicant

A N D

REUNITED EMPLOYEES  
ASSOCIATION INCORPORATED  
Respondent

Member of Authority: Peter van Keulen

Representatives: Nick Mason, counsel for the Applicant  
Anjela Sharma, counsel for the Respondent

Investigation Meeting: On the papers, with telephone conferences on 14 February  
2019 and 4 March 2019.

Submissions Received: 8, 14 and 28 February 2019 and 4 March 2019 from the  
Applicant  
14 and 28 February 2019 and 1 and 4 March 2019 from the  
Respondent

Date of Determination: 5 March 2019

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Nelmac Limited and Reunited Employees Association Incorporated are parties to a Collective Employment Agreement, which expired on 30 June 2017.

[2] Prior to the collective agreement expiring, in May 2017 the parties commenced bargaining to agree a renewal of the collective agreement. They were unable to agree terms of a renewed collective agreement before the end of June 2017.

[3] Since the expiry of the collective agreement, there have been various efforts between the parties to bargain over the terms for a new collective agreement, but as of March 2019, a new collective agreement has not been concluded.

[4] During the course of bargaining both Nelmac and Reunited made applications to the Authority in respect of matters arising out of bargaining. These various applications and the ongoing bargaining have now culminated in Nelmac seeking a reference to facilitation under s 50C of the Employment Relations Act 2000 (the Act).

[5] Reunited supports the reference to facilitation.

[6] By agreement, this matter has been determined on the papers. As a result, I have not heard any oral evidence or tested the various allegations and assertions made by the parties to support their respective positions on this application. My account of the events, which support my determination, have been taken from the various untested assertions and allegations set out in the applications lodged and supporting materials. It follows that my account of events should be read with this overriding caveat in mind.

### **Reference to Facilitation**

[7] The Authority must not accept a reference for facilitation unless it is satisfied that one or more of the grounds in s 50C(1) of the Act exist.

[8] Both parties accept that the grounds in s 50C(1)(b) of the Act have been made out, that is:

- (i) that the bargaining has been unduly protracted; and
- (ii) extensive efforts (including mediation) have failed to resolve the difficulties that have precluded the parties from entering into a collective agreement.

[9] So, whilst the parties agree that the grounds in s 50C(1)(b) have been established, I need to be satisfied that this is the case before I refer the parties to facilitation.

### **Bargaining**

[10] Bargaining commenced in May 2017. The parties then attended mediation on 4 September 2017. Two further bargaining meetings were held on 10 November 2017 and 7 December 2017.

[11] During this bargaining Reunited lodged two applications with the Authority, without giving Nelmac notice in advance, over allegations of breaches of the duty of good faith and issues arising out of Nelmac's payment of overtime – overtime also being one of the issues subject to bargaining.

[12] It appears that through a combination of the applications and protracted negotiations over the overtime issues, further bargaining scheduled for December 2017 was cancelled.

[13] In January 2018, the parties were directed to attend mediation by the Authority on the issues raised in Reunited's application and for ongoing bargaining. Mediation occurred on 23 February 2018, 14 March 2018 and 19 – 20 April 2018.<sup>1</sup>

[14] Through March and April 2018 when the mediation sessions took place two events occurred which appear to have had an impact on bargaining:

- (a) Reunited members began strike action on 10 April 2018, with strikes to occur on every Tuesday for four hours until ratification of a new collective agreement. On 13 April strike action was suspended for 17 April pending the mediation meeting taking place on 19 April.
- (b) On 4 April 2018, Reunited made allegations of bullying by a senior employee, which it said was sanctioned by the board of directors of Nelmac. There was then ongoing correspondence exchanged, which has been described as combative and unconstructive, over the bullying allegation – with Reunited

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<sup>1</sup> Counsel for Reunited says the "mediations" were not mediations but rather bargaining sessions with a mediator present.

asserting the allegations and accusing Nelmac of not responding to the concerns, Nelmac maintaining that there was no basis for the allegations.

[15] After the mediation meetings there remained outstanding issues to be resolved and the Authority directed the parties to formulate joint questions for it to investigate and determine. The parties were unable to do this, with a dispute arising over compliance with the timetable imposed by the Authority and a number of questions being exchanged.

[16] Reunited then proceeded to hold a ratification meeting where it purported to ratify terms of settlement. Without further evidence on this aspect, I cannot reconcile this aspect of the bargaining process. It is not clear to me why following the mediation sessions, where there appeared to be issues between the parties that informed the various questions exchanged, there appeared to be terms of settlement to be ratified. It is not necessary for me to resolve this aspect of the bargaining for this application, suffice to say each party believed there were terms of settlement it had proposed that should have been ratified.

[17] Because of this impasse, the Authority then intervened and attempted to assist the parties to reach an agreement. A meeting was held on 18 July 2018 in which the Authority member assisted negotiations between the parties.

[18] The result of this intervention was not an agreed outcome or accepted terms of settlement – in fact both parties continued to assert that they had terms of settlement, which the other side had, or should have, accepted.

[19] Following this final impasse Nelmac applied to the Authority for a declaration that bargaining had ended and that Reunited had breached the duty of good faith. It was then in the course of dealing with these two applications that it suggested facilitation would be productive, which after some discussion Reunited accepted: Nelmac's application for a reference to facilitation, which is the subject of this determination then followed.

### **Analysis of application**

[20] It appears to me that the parties have been involved in dealing with ongoing disputes over issues such as overtime payments and allegations of bullying, which have impacted on

their ability to agree and conclude a collective agreement. I think the parties have become entrenched in bargaining positions partly because of the some mistrust or ill feeling arising out of acrimonious dealings over the related issues and because of the protracted nature of bargaining, including more recently the fundamental difference of opinion on whether an agreement had been reached on disputed bargaining issues.

[21] Overall, I am satisfied that the bargaining has become unduly protracted. The parties have been bargaining since May 2017 and extensive efforts, including bargaining meetings, ongoing correspondence, mediation, strike action and threatened strike action, Authority applications and Authority intervention (on two of the applications) have failed to resolve the difficulties that have prevented the parties from entering into a new collective agreement.

[22] It follows that I will accept the reference to facilitation.

### **Conclusion**

[23] I have concluded that the grounds under s 50C(1)(b) of the Act are established. The bargaining has been unduly protracted and extensive efforts have failed to resolve the difficulties.

[24] For these reasons, I accept the reference for facilitation and, as required by s 50D of the Act, another Member will provide facilitation of the collective bargaining.

### **Costs**

[25] Costs are reserved.

Peter van Keulen  
Member of the Employment Relations Authority